REMARKS

The above amendment is made in response to the Advisory Action mailed March 4, 2004 and the Final Office Action mailed December 18, 2003. Claims 1-18 are pending in the present application and stand rejected. Claims 1, 8, and 13-18 have been amended. Claims 2 and 9 have been cancelled. The Examiner's reconsideration is respectfully requested in view of the following remarks.

Claims 1, 3-8, and 10-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kirch (U.S. Patent No. 6,324,161) (hereinafter "Kirch") in view of Connelly *et al.* (U.S. Patent No. 6,594,786) (hereinafter "Connelly").

Claim 1 has been amended to include "said method comprising a third step of updating said notification-period depending on the amount of *workload* of said application-server either by *increasing said notification-period, if said amount of the workload increases*, or by *decreasing said notification-period, if said amount of the workload decreases*."

The Final Office Action cites col. 8, lines 25-56, col. 10, lines 54-67, and col. 11, lines 1-34 of Kirch as teaching the above recited limitations of amended claim 1. It is respectfully asserted that nothing in recited portions of Kirch discloses "the amount of workload of said application-server," as claimed in amended claim 1. Further, the recited portions of Kirch do not teach or suggest "by increasing said notification-period, if said amount of the workload increases" and "decreasing said notification-period, if said amount of the workload decreases," also as claimed in amended claim 1. Accordingly, amended claim 1 is patentably distinguishable over the combination of Kirch and Connelly.

Claim 8 has been amended to include "wherein said *measure of availability* of the second step *indicates unavailability of said application-server, if said difference exceeds said notification-period.*"

The Final Office Action cites col. 19, lines 65-67 to col. 20, lines 1-59 of Kirch as teaching the above recited limitations of claim 8. The recited portions of Kirch explicitly disclose that "steps 88 through 100 [as disclosed in Kirch] pertain to the *detection of communication failures and responding to such failures*" and that "steps 102 through 110 [as disclosed in Kirch] pertain to *supplying heartbeat packets to local and remote networks.*" (Kirch, col. 20, lines 15-19). Nothing in the recited portions of Kirch teach or suggest a "measure of availability" that "indicates *unavailability of said application-server*, if said difference exceeds said notification-period," as claimed in amended claim 8. Accordingly, amended claim 8 is patentably distinguishable over the combination of Kirch and Connelly.

Claim 13 has been amended to include a "*persistent* central availability-database." It is respectfully asserted that the combination of Kirch and Connelly does not teach or suggest a "*persistent* central availability-database." It is further asserted that modifying the internal timing table of Kirch to be persistent renders it unsatisfactory for its intended purpose.

In general, Kirch teaches a configuration for providing redundancy in an IP network by switching from one communication path to another communication path. (Kirch, Abstract). As stated in Kirch, "[i]n the redundant system, if the primary resource becomes inoperative then the secondary resource is preferably *quickly* used in place of the primary resource, thereby *minimizing or eliminating the chance to perceive the failure of*
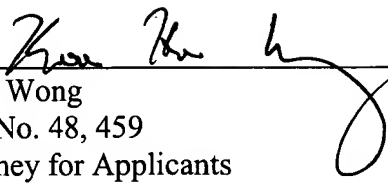
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the primary resource." (Kirch, col. 1, lines 3-8). Thus, requiring Kirch to access a *persistent* internal timing would render it unsatisfactory for its intended purpose by increasing the time to switch from one communication path to another, thereby unduly increasing "the chance to perceive the failure of the primary resource." Additionally, the use of the term "internal" in "internal timing table" implies that it is implemented in *internal* memory, which is must faster than a *persistent* database, thereby satisfying the intended purpose of Kirch. Accordingly, amended claim 13 is patentably distinguishable over the combination of Kirch and Connelly.

Claim 14 is patentably distinguishable over the combination of Kirch and Connelly for at least the reasons provided above for claims 1, 8 and 13. Further, claim 15 is patentably distinguishable over the combination of Kirch and Connelly. The recited combination does not teach or suggest the "*remote* central-availability database comprising a *persistent* file system separate from said application-server," as claimed in claim 15. Claims 16 to 18 are patentably distinguishably for at least the reasons given for claim 15.

Accordingly, claims 1, 8 and 13-18 are believed to be patentably distinguishable and nonobvious over the combination of Kirch and Connelly. Dependent claims 3-7 and 10-12 are believed to be allowable for at least the reasons given for claims 1 and 8, respectively. Withdrawal of the rejection of 1, 3-7, 8 and 10-18 under 35 U.S.C. §103(a) is respectfully requested.

In view of the foregoing remarks, it is respectfully submitted that all the claims now pending in the application are in condition for allowance. Early and favorable reconsideration is respectfully requested.

Respectfully submitted,

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